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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/938,734	08/27/2001	Hiroyuki Yokoyama	011006	2750
23850	7590	03/09/2005		EXAMINER
				PAYNE, DAVID C
			ART UNIT	PAPER NUMBER
				2633

DATE MAILED: 03/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/938,734	YOKOYAMA ET AL.
	Examiner	Art Unit
	David C. Payne	2633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 5 October 2004.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1, 4-10, 13-16 and 17 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) 1,4-10 and 13-16 is/are allowed.  
 6) Claim(s) 17 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
     1. Certified copies of the priority documents have been received.  
     2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
     3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

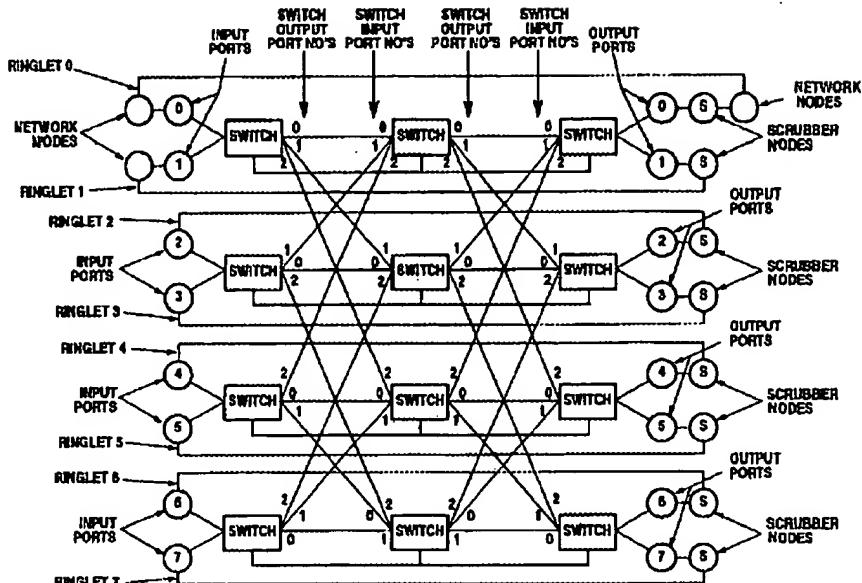
### ***Response to Arguments***

1. Applicant's arguments filed 5 October 2004 with respect to claim 17 have been fully considered but they are not persuasive.
2. Regarding the applicant's regarding the alleged decencies of Bennett.

In the Bennett prior art, choosing a random port from the output ports judged not to be in congestion from among the two output ports is a trivial exercise as can be seen from the figure. Furthermore, it can also be seen from the figure that the output ports connected to the input ports are fixed and will incur a bound known time back to the front of the switch since they do not travel a random path back to the input ports. Therefore, one of ordinary skill in the art at the time of invention would conclude to choosing random and within a predetermined time frame in the Bennett prior art is a trivial exercise that is fixed based on the switch topology at hand.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
  - (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bennett et al. US 5,799,015 (Bennett).  
Re claim 17, Bennett disclosed,

Figure 1

A routing control method in an optical packet switching network including a plurality of optical packet switches, each optical packet switch having a plurality of output ports used for sending packets to other optical packet switches, respectively, said method comprising the steps of: in a one optical packet switch (see *Bennett Figure 1, switch in Row 1 Column 3*) monitoring congestion conditions at its output ports (see *Bennett e.g., col./line: 21/12-25*);

in said one optical packet switch, transferring packets to be stored in a one output port (*port 1 of switch in Row 1 Column 3*) that is judged in said monitoring step as in congestion, to other output port that is judged in said monitoring step as not in congestion (*port 0 of switch in Row 1 Column 3*); from said one optical packet switch, sending the packets as reflection packets via said other output port to an other optical packet switch (*switch in Row 1 Column 1*) corresponding to said other output port; and from said other optical packet switch,

returning said reflection packets to said one optical packet switch (see *Bennett e.g.,*

*col./line: 21/12-25 ).*

Bennett does not explicitly disclose,

wherein said transferring step comprises selecting said other output port in random from output ports judged in said monitoring step as not in congestion so as to provide reflection routes with transmission delay times within a predetermined range. However, in the Bennett prior art, choosing a random port from the output ports judged not to be in congestion from among the two output ports is a trivial exercise as can be seen from the figure. Furthermore, it can also be seen from the figure that the output ports connected to the input ports are fixed and will incur a bound known time back to the front of the switch since they do not travel a random path back to the input ports. Therefore, one of ordinary skill in the art at the time of invention would conclude to choosing random and within a predetermined time frame in the Bennett prior art is a trivial exercise that is fixed based on the switch topology at hand.

#### ***Allowable Subject Matter***

5. Claims 1, 4-10, and 13-16 are allowed.

#### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David C. Payne whose telephone number is (571) 272-3024. The examiner can normally be reached on M-F, 7a-4p.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Chan can be reached on (571) 272-3022. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dcp

  
David C. Payne  
Patent Examiner  
AU 2633